

International Association of Machinists and Aerospace Workers, Local Lodge 1769 (Dorsey Trailers, Inc.) and Arthur Hudson. Case 15-CB-2625

10 August 1984

DECISION AND ORDER

BY CHAIRMAN DOSTSON, ZIMMERMAN,
HUNTER, AND DENNIS

DECISION AND ORDER

Upon a charge filed by Arthur Hudson 2 August 1982 the General Counsel of the National Labor Relations Board issued a complaint 8 September 1982 against the Respondent alleging that it has violated Section 8(b)(1)(A) of the National Labor Relations Act.

The complaint alleges that the Respondent (a) imposed a court-collectible fine against Arthur Hudson for engaging in certain conduct after he had submitted a written resignation of his membership in the Respondent, and (b) filed a complaint in court seeking to collect the fine. These actions are alleged as violations of Section 8(b)(1)(A) of the Act. The Respondent filed an answer denying that it committed any unfair labor practices.

On 27 January and 7 and 21 March 1983 the Union, the Charging Party, and the General Counsel, respectively, moved the Board to transfer the instant proceedings to the Board, without benefit of a hearing before an administrative law judge, and submitted a proposed record consisting of the formal papers and the parties' stipulation of facts with attached exhibits. On 29 July 1983 the Associate Executive Secretary, by direction of the Board, issued an order granting the motion, approving the stipulation, and transferring the proceeding to the Board. Thereafter, the General Counsel and the Respondent filed briefs.

Upon the entire record in the case, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, a corporation licensed to do business in the State of Alabama, is engaged in the manufacture of over-the-road truck trailers at its facility in Elba, Alabama. During the 12 months preceding issuance of the complaint, the Employer, in the course and conduct of its business operations, purchased and received goods and materials valued in excess of \$50,000 which were received at its Elba, Alabama facility directly from points located outside the State of Alabama. We find that the Employer is an employer engaged in commerce within

the meaning of Section 2(6) and (7) of the Act. We further find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The issue presented is whether the Respondent violated Section 8(b)(1)(A) by imposing a fine and seeking to collect that fine against employee Arthur Hudson for conduct that occurred after Hudson resigned his membership in the Respondent.

A. Facts

The Respondent and the Employer were parties to a contract which expired about 31 October 1981 covering certain employees at the Employer's Elba, Alabama facility. Negotiations for a new contract began in October 1981. They were unsuccessful and a strike ensued 2 November 1981. Hudson was a member of the Respondent at the commencement of a strike until 29 November, when he submitted a written resignation to the Respondent.

Article L, section 3, of the Respondent's constitution provides, in pertinent part:

SEC. 3. The following actions or omissions shall constitute misconduct by a member which shall warrant a reprimand, fine, suspension and/or expulsion from membership, or any lesser penalty or any combination of these penalties as the evidence may warrant after written and specific charges and a full hearing as hereinafter provided:

Accepting employment in any capacity in an establishment where a strike or lockout exists as recognized under this constitution, without permission. Resignation shall not relieve a member of his obligation to refrain from accepting employment at the establishment for the duration of the strike or lockout if the resignation occurs within the period of the strike or lockout or within 14 days preceding its commencement. Where observance of a primary picket line is required, any resignation tendered during the period that the picket line is maintained, or within 14 days preceding its establishment, shall not become effective as a resignation during the period the picket line is maintained, nor shall it relieve a member of his or her obligation to observe the primary line for its duration.

These provisions were read to the membership at meetings held 18 and 31 October, at which time strike votes were also taken. As noted, the Re-

spondent started its strike 2 November. The strike lasted until 1 December. Hudson participated in the strike vote and the strike by refraining from reporting to work prior to 30 November. On 29 November Hudson hand-delivered a written letter of resignation to the Respondent and returned to work for the Employer the following day.

Thereafter, on 23 December, the Respondent notified Hudson by letter that he had been accused of crossing a picket line and working at the Employer's facility during an authorized strike. Hudson was further informed that a trial on the matter would be held 16 January 1982. At the trial, the Respondent found Hudson guilty of the charge and imposed a \$500 court-collectible fine against him. Hudson did not attend the trial and did not receive notice of the fine until 8 April 1982. On 23 July 1982 the Respondent filed a claim in court against Hudson for the collection of the fine. A trial was held in November 1982, but no decision had been rendered at the time of the stipulation and the Respondent had made no further effort to collect the fine.

B. Contentions of the Parties

The General Counsel urges the Board to find a violation relying on the Board's decision in *Machinists Local 1327 (Dalmo Victor)*, 263 NLRB 984 (1982). There, a plurality of the Board found that "a union rule which limits the right of a union member to resign only to nonstrike periods constitutes an unreasonable restriction on a member's Section 7 right to resign." *Id.* at 986. The General Counsel asserts that, because the rule at issue here is substantially similar to that considered in *Dalmo Victor*, the rule is unenforceable for the same reasons.

The Respondent argues that the Board should dismiss the complaint asserting that the "common law" rule with respect to voluntary associations, such as unions, is that limitations on resignations are enforceable where the purpose of the limitation is to preserve group solidarity and mutual reliance in situations in which a collective effort is necessary to achieve a particular result. The Respondent adds that, if union solidarity can be destroyed by individual acts of defection, the employer will be far less responsive to the union's threat to strike and the union will be less able to negotiate effectively on behalf of its members.

C. Discussion

While we agree with the General Counsel that the Respondent's actions against Hudson violated Section 8(b)(1)(A), we do not rely on the opinion in *Dalmo Victor* in reaching this result. Instead, our

recent decision in *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984), is controlling. In *Neufeld*, we reversed the plurality decision in *Dalmo Victor* and its creation of a "salutary rule" under which a union could impose a 30-day restriction on its members' right to resign. Rather, the Board adopted the concurring view of former Chairman Van de Water and Member Hunter that any restriction on a union member's right to resign is unreasonable and violates the Act. Accordingly, for the reasons set out in *Neufeld*, we find that a union may not lawfully restrict the right of its members to resign or otherwise refrain from protected Section 7 activities.¹ We further find that the Respondent violated Section 8(b)(1)(A) by imposing a fine on Hudson for returning to work during the strike after he resigned his membership in the Respondent, and by filing a claim in court seeking to collect the fine.

CONCLUSIONS OF LAW

1. Dorsey Trailers, Inc., Elba, Alabama, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. By imposing a fine against Arthur Hudson for returning to work at Dorsey Trailers, Inc., during the strike that commenced about 2 November 1981 after Hudson resigned his membership in the Respondent, and by filing a claim in state court seeking to collect the fine, the Respondent violated Section 8(b)(1)(A) of the Act.
4. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act, including the refund to Hudson of any moneys he may have paid as a result of the fine imposed against him, with interest computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).² In addition, we shall order the

¹ Member Zimmerman agrees that the Respondent, by its enforcement of a rule permitting members to resign only if their resignations are submitted no later than 14 days preceding the commencement of a strike, violated Sec. 8(b)(1)(A). However, he finds the violation only for the reasons expressed by the Board plurality in *Dalmo Victor*, supra, and his concurring opinion in *Neufeld Porsche-Audi*, supra.

² See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

Respondent to cease and desist from maintaining the restriction on resignations found invalid and expunge the provision from its constitution. *Engineers & Scientists Guild (Lockheed-California)*, 268 NLRB 311 (1983).³

The National Labor Relations Board orders that the Respondent, International Association of Machinists and Aerospace Workers, Local Lodge 1769, Elba, Alabama, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining in its constitution article L, section 3, to the extent it provides:

SEC. 3. The following actions or omissions shall constitute misconduct by a member which shall warrant a reprimand, fine, suspension and/or expulsion from membership, or any lesser penalty or any combination of these penalties as the evidence may warrant after written and specific charges and a full hearing as hereinafter provided:

...

Accepting employment in any capacity in an establishment where a strike or lockout exists as recognized under this constitution, without permission. Resignation shall not relieve a member of his obligation to refrain from accepting employment at the establishment for the duration of the strike or lockout if the resignation occurs within the period of the strike or lockout or within 14 days preceding its commencement. Where observance of a primary picket line is required, any resignation tendered during the period that the picket line is maintained, or within 14 days preceding its establishment, shall not become effective as a resignation during the period the picket line is maintained, nor shall it relieve a member of his or her obligation to observe the primary picket line for its duration.

(b) Restraining or coercing employees who have resigned from, and are no longer members of, the Respondent in the exercise of the rights guaranteed them by Section 7 of the Act by imposing court-collectible fines on such employees and seeking to collect those fines in court because of those employees' postresignation conduct in working at Dorsey Trailers, Inc., during the strike that began about 2 November 1981.

³ Member Dennis does not join this portion of the remedy because the complaint does not allege the maintenance of the constitutional provision to be unlawful and because, as she reads the stipulation of facts, the constitution referred to is the constitution of the parent International, which is not a party to this proceeding. See her position set forth in fn. 22 of *Neufeld Porsche-Audi*, supra.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Expunge from its constitution the portion of article L, section 3, set forth above.

(b) Rescind the fine levied against Arthur Hudson because of his postresignation work for Dorsey Trailers, Inc., during the strike that began 2 November 1981 and refund to him any moneys he may have paid as a result of such fine, with interest.

(c) Expunge from its records and files all references to fines or discipline, including any intraunion charges, citations, fines, or other disciplinary action or disciplinary proceedings, against Arthur Hudson for conduct occurring after his resignation from the Union, including working behind a picket line, and notify him of such expunction.

(d) Post at its business office and meeting halls copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return to the Regional Director sufficient copies of the notice for posting by Dorsey Trailers, Inc., if willing, at all places where notices to employees are customarily posted.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁴ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT maintain in our constitution article L, section 3, to the extent it provides:

SEC. 3. The following actions or omissions shall constitute misconduct by a member which shall warrant a reprimand, fine, suspension and/or expulsion from membership, or any lesser penalty or any combination of these penalties as the evidence may warrant after written and specific charges and a full hearing as hereinafter provided:

Accepting employment in any capacity in an establishment where a strike or lockout exists as recognized under this constitution, without permission. Resignation shall not relieve a member of his obligation to refrain from accepting employment at the establishment for the duration of the strike or lockout if the resignation occurs within the period of the strike or lockout or within 14 days preceding its commencement. Where observance of a primary picket line is required, any resignation tendered during the period that the picket line is maintained, or within 14 days preceding its establishment, shall not become effective as a resignation during the period the picket line is maintained, nor shall it relieve a member of his or her obligation to observe the primary picket line for its duration.

WE WILL NOT restrain or coerce employees who have resigned from, and are no longer members of,

the Union in the exercise of the rights guaranteed them by Section 7 of the Act by imposing court-collectible fines on such employees and seeking to collect those fines in court because of their postresignation conduct in working at Dorsey Trailers, Inc., during the strike that began 2 November 1981.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL expunge from our constitution the portion of article L, section 3, set forth above.

WE WILL rescind the fine levied against Arthur Hudson because of his postresignation work for Dorsey Trailers, Inc., during the strike that began 2 November 1981 and WE WILL refund to him any moneys he may have paid as a result of such fine, with interest.

WE WILL expunge from the Union's records and files all reference to fines or discipline, including any intraunion charges, citations, fines, or other disciplinary action or disciplinary proceedings, against Arthur Hudson for conduct occurring after his resignation from the Union, including working behind a picket line, and WE WILL notify him of such expunction.

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORK-
ERS, LOCAL LODGE 1769